

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

OSA NO.20 Of 1999.

Date of decision: December 11, 2006.

Parma Nand. Petitioners.
Vs.

State of H.P. and others. Respondents.

Coram

The Hon’ble Mr.Justice Deepak Gupta, Judge.

The Hon’ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting?

For the appellant: Mr. Bhupender Gupta, Sr. Advocate with
Mr. Praneet Gupta, Advocate.

For the respondents: Mr. M.S. Chandel, Advocate General with
Mr. J.K.Verma, Dy.A.G. for the respondents.

Surinder Singh, J (Oral):

1. The instant appeal has been filed by the appellant feeling aggrieved and dissatisfied by the judgment and decree passed by the Learned Single Judge in Civil Suit No.88 of 1992 dated 22nd December, 1998, whereby the suit filed by the appellant was partly decreed.
2. In brief, the facts giving rise to the instant appeal are that the appellant is a registered mining contractor, who had taken a slate quarry named as “Gaddi Dwar” on auction, on the highest bid of Rs. 41,000/- and deposited security of Rs.10,250/- alongwith first instalment of the equal amount on 4.5.1987, on execution of the agreement (Ext.PW1-A) dated 21.6.1988 being the highest bidder, for a period of five years w.e.f 1.9.1987. As per the agreement, the amount of Rs.41,000/- per annum

Whether reporters of local Papers may be allowed to see the judgment?

was to be paid in equal quarterly installments. It was pleaded that up to 1.3.1999, the appellant had paid six instalments and each instalment was of Rs.10,250/-. He had also made the payment of Rs.71,750/- as security and royalty amount to the respondents. It was averred by the appellant that he had spent an amount of Rs.1,40,000/- for arranging rope ways and three diesel engines for the purpose of running the quarry and also spent Rs.21,000/- for the material which was required for its working. But in the meantime, vide letter dated 11.6.1991 (Ext.PW1/B), the Mining Officer informed that the lease in favour of the appellant was cancelled in public interest w.e.f. 18.3.1989. It is alleged that no show cause notice was given to the appellant before such cancellation, whereas, the agreement provided 30 days notice. Thus, he incurred the expenses and damages to the tune of Rs.3,22,00/-, and the cancellation was wrong. On these allegations, the appellant sought the relief and prayed for a decree of specific performance of contract aforesaid and also claimed in total the amount of Rs.5,85,825/- alongwith the interest @ 17% per annum.

3. The suit was resisted and contested by the respondents and in their written statement while admitting the execution of the agreement it was contended that the appellant had made a default in making the payment of the instalment, which was due on 1.6.1999. Thus, the lease aforesaid was cancelled as per Clause 4(b) of the agreement. The respondents also took up the objections of estoppel, valuation, non joinder of parties and limitation in the preliminary objections. Further specifically pleaded that the appellant vide his letter dated 15.5.1990 (Ext.DE), addressed to respondent No.3 had requested, if in view of the provisions of the Forest Conservation Act, 1980, the respondents are unable to review the cancellation order in that event they should return his security amount to the tune of Rs.20,500/- (Rs.10,250/- security

amount and Rs.10,250/- the payment of 7th instalment) and agreed to withdraw his claim and any legal action against the respondents. The respondents vide letter dated 11.6.1991 (Ext.PW1/B) accepted this offer and the appellant was requested to withdraw his security and instalment of royalty on any working day from respondent No.3. On merits, the respondents justified the cancellation of the contract and specifically averred that the appellant had indulged in violation of the provision of Forest Conservation Act, 1980, due to which action was taken against him and his contract was validly cancelled in public interest, vide Exhibit PW1/B. Hence, prayed for dismissal of this suit.

4. On the pleadings of the parties, following issues were framed:

1. Whether the suit is barred by limitation? OPD.
2. Whether the suit has been properly valued for the purpose of court-fee? If so, what is the correct valuation? OPD.
3. Whether the plaint does not disclose any valid cause of action? OPD.
4. Whether the suit is bad for non-joinder of necessary parties? OPD.
5. Whether the plaintiff is entitled to a decree for specific performance of the contract? OPP.
6. Whether the contract of slate quarry in question has rightly been cancelled by the defendants in accordance with the terms and conditions? If not, its effect? OP Parties.
7. Whether the plaintiff is entitled to recover damages from the defendants? If so to what extent? OPP.
8. Whether the plaintiff is estopped from filing the suit due to his acts, omissions, conduct and acquiescence, as alleged in the preliminary objections No.1 and 2? OPD.
9. Whether the defendant is estopped from canceling the contract in question? OPP.
10. Relief.

5. To prove the aforesaid issues, the appellant besides examining himself as PW2, had also examined PW1 Satish Kaistha (Mining Officer), PW3 Kamala Ram , who was labourer with the appellant and PW4 Lal

Singh, Clerk (Munshi) of the appellant. On the other hand, respondents examined Shri N.S. Kashyap, Deputy Secretary (Industries).

6. Upon hearing the parties and going through the record, the learned Single Judge returned the finding on issue No.6 in favour of the appellant holding that in absence of the notice cancellation of the contract Ext.PW1/A was not valid and in answer to issue No.5 above it was held that the appellant was not entitled for a decree of specific performance of the contract as the contract had become impossible of being performed. However, while dealing with the issues No.7 and 8, the learned Single Judge on the appreciation of the evidence held that the appellant had given up his claim and confined himself to the refund of security amount and the seventh instalment, which was agreed to be paid by the respondents vide their letter Ext.DG. Therefore, the appellant was estopped to claim any compensation/ damages except the amount of Rs.20,500/-. Issues No.1 to 4 and 9 were not pressed by the appellant, consequently, the suit was partly decreed for a sum of Rs.20,500/- with proportionate cost in favour of the appellant and against the respondents with interest at the rate of 12% instead of 17 % per annum as claimed, from the date of the suit, i.e. on 18.5.1992 till its payment/realization.

7. Having felt aggrieved and dissatisfied by the impugned judgment and decree, the instant appeal was filed on the ground that declining the relief as claimed by the appellant was highly unjust, illegal, arbitrary and against the law which requires to be modified. The learned Single Judge could not have taken this view from the evidence on record. The oral and documentary evidence was totally misread and the provisions of Section 65 of the Contract were also misapplied. Hence, prayed for the acceptance of the appeal.

8. We have carefully heard the counsel for the parties and have gone through the oral as well as documentary evidence on record, in extenso.

9. As a matter of fact, the agreement dated 21.6.1988 (Ext.PW1/A) stands admitted by the parties and there is also no dispute regarding the payment of seventh instalment by the appellant till 1.3.1999. It is also admitted that no notice was given to the appellant before the cancellation of the contract aforesaid thus it was rightly held by the learned Single Judge that such a cancellation cannot be held valid in the eyes of law in view of the Clause 29 of Part-III of the agreement Ext.PW1/A, precisely, which provides the giving of one month's notice for any breach of clauses of the said agreement but because the quarry in question was admittedly located in the demarcated protected forest, wherein the mining operation could not have been carried out contrary to the Forest Conservation Act, 1980, therefore, the contract became impossible of being performed. The appellant as PW2 has clearly admitted that he had received a notice Ex.DA from the department with regard to non-payment of the instalment, which was due on 1.6.1999 which he could not pay inspite of the notice aforesaid, therefore, applied for its extension vide his letter Ext. DD. Above all, it is pertinent to note that the appellant has also admitted having sent the letter Ext.DE to the defendant No.3, which in brief, says that if the Mining Department allows the work of the said mine with the permission of the Forest Department, he would deposit eighth instalment, and in case the agreement stood cancelled for non-payment of the seventh instalment, his security amount of Rs.10,250/- and royalty amount of Rs.10,250/- (total Rs.20,500/-) may be returned to him as he has to work on other mines with him and he did not want to file any claim or indulge in any type of litigation against the department. This very document (letter Ext.DE) clearly exhibits that the appellant confined

himself only to the refund of amount of Rs.20,500/- i.e. Rs.10,250/- security amount and Rs.10,250/- of the 7th instalment and waived of the other claims, which representation was accepted by the respondents. Therefore, in these circumstances, in our considered opinion, the appellant is estopped from claiming any other relief than already granted by the learned Single Judge.

10. On the examination of the aforesaid oral as well as documentary evidence on record, we do not find anything worth inference, therefore, we concur and hereby affirm the issue-wise findings of the learned Single Judge and accordingly uphold the judgment and decree passed in civil suit aforesaid. Resultantly, the appeal fails and is accordingly dismissed with costs.

(Deepak Gupta)
Judge.

December 11,2006.
(PDS)

(Surinder Singh)
Judge.